IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Ins.APP.No. 50 of 2004()

IC.24/2002 of ESI COURT, PALAKKAD
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APPELLANTS/OPPOSITE PARTY

E.S.I.CORPORATION, PANCHADEEP BHAVAN,
TRISSUR 680 020.

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENTS: APPLICANT

P.K.KAIMAL, NO.60, NANDANAM EXTENSION,
NEW NO.1, III STREET, CHENNAI-36.

BY ADV. SRI.M.P.ASHOK KUMAR

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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INS. APPEAL NO. 50 OF 2004

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Dated this the 7th day of March, 2007

J U D G M E N T

The Employees' State Insurance Corporation which is the opposite party in I.C. No.24 of 2002 on the file of the Employees' Insurance Court, Palakkad is the appellant. Appellant initiated proceedings against the respondent holding that the establishment of the respondent is covered by the provisions of the ESI Act and as such the respondent is liable to pay the contribution. Initially when demand was made, the respondent challenged the same before this Court by filing O.P. No.16039 of 1999. This Court disposed of the O.P. giving the respondent an opportunity to approach the EI Court within two months. Accordingly, respondent filed I.C. No.24 of 2002. The respondent contented that on an earlier occasion there was a demand and that demand was challenged by him before the EI Court, Alappuzha. The EI court set aside the demand and remanded the matter to the competent authority to reconsider the same. It

was further contended that the directions issued by the EI Court were not complied with and no notice was issued to the respondent. It was also contended that the impugned order was passed without application of mind. The E.I. Court held that it was not necessary for the appellant to wait indefinitely but allowed the claim only on the ground that a claim under Section 39(5) of the ESI Act is barred by limitation since a claim is not made within a period of 5 years. The E.I. Court relying on a decision reported in **E.S.I. Corporation v. Excel Glasses** (2003) (3) KLT 42 (F.B.) set aside the order passed by the appellant demanding contribution. Challenging that decision, this appeal is filed.

2. Learned counsel for the appellant has contended that the EI Court allowed the claim on the sole ground that the claim is barred by limitation. It was contended that the Full Bench decision rendered in **Excel Glasses's case** (supra) was specifically considered in **E.S.I. Corporation v. Santhakumar** (2007 (1) KLT 133 (SC) and the Supreme Court

overruled the principle laid down in **Excel Glasse's case** (supra). So the finding of the EI Court that the claim is barred by limitation is unsustainable and liable to be set aside.

3. Learned counsel for the respondent submitted that the appellant did not comply with the directions issued by the EI Court in Exhibit B5 and as such the appellant is not entitled to get any relief. The case put forward by the appellant was that a number of letters were sent to the respondent directing him to produce the documents. The respondent tried to evade notice, but finally notice was served. Even after accepting the notice the respondent did not produce the documents.

4. Considering the entire facts and circumstances of the case, I am of the view that one more opportunity can be given to the respondent to produce documents before the authority, if he want to establish that the claim of the appellant is not correct. I do not find any reason to compel the appellant to serve any notice on the respondent. The respondent shall produce all relevant documents before the appellant within two months from

today.

In the result, the order passed by the EI Court in I.C. No. 24 of 2002 is hereby set aside. It is found that the claim made by the appellant is not barred by limitation. But the demand made by the appellant is also set aside and the respondent is given one more opportunity to adduce evidence in support of the contentions raised by him. The respondent is given two months' time from today to produce documents before the competent Officer of the appellant in support of his case. In case the respondent fails to produce the documents and adduce evidence, it is open to the appellant to pass fresh orders in accordance with law as if the respondent has no evidence to adduce.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF 2007

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J U D G M E N T

7TH MARCH, 2007